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DELTA STEWARDSHIP COUNCIL

A California State Agency

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RE: Comments on Initial Study/Mitigated Negative Declaration for the Proposed Yolo Bypass Wildlife Area Habitat and Drainage Improvement Project

Dear Mr. Rodriguez:

Thank you for the opportunity to submit comments on the California Department of Fish and Wildlife's (CDFW) Initial Study/Mitigated Negative Declaration for the proposed Yolo Bypass Wildlife Area Habitat and Drainage and Improvements Project, hereafter referred to as the "Project" or "Project IS/MND".

As you may know, the Delta Stewardship Council (Council) was established by the Delta Reform Act of 2009 (Delta Reform Act), and is an independent state agency charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan. As stated in the Delta Reform Act, the state has "'coequal goals' (which) means two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place" (Water Code section 85054).

The Council, through the Delta Reform Act, was granted specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta and Suisun Marsh; the Council exercises this authority through the development and implementation of the Delta Plan. According to the Delta Reform Act, State or local agencies approving, funding or carrying out projects, plans, or programs, upon determining their project is a "covered action" subject to regulations of the Delta Plan, must certify consistency of the project with the Delta Plan's policies (Water Code section 85225). Based on the project description, Council staff believes your project meets the definition of a covered action.

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– CA Water Code §85054

Delta Plan Policies and Consistency

The Delta Plan includes 14 regulatory policies that are applicable to all covered actions. Below we have highlighted a few key regulatory policies from the Delta Plan that may be specifically relevant to the Project and a Delta Plan certification of consistency.

State and local agencies are required to certify that their projects' consistency with the Council's 14 regulatory policies if their proposed activity is a "covered action" under the Delta Plan, which includes plans, programs, or projects (as defined by Public Resources Code section 21065) that would occur, in whole or in part, with the Delta or Suisun Marsh. As the California Environmental Quality Act lead agency, the California Department of Fish and Wildlife would be responsible for completing the Certification of Consistency.

Council staff is available to consult with you further about this process, as provided by Water Code section 85225.5.

Comments on the Proposed Project

The Project proposes to undertake five actions with an objective of improving water management for wetland resources and agricultural operations. These actions include construction of new water control structures, box culverts, and bridges, replacing existing culverts, raising some road elevations, and installing two additional pumps, among others. It is our understanding that through these actions the Project would create 220 acres of new wetlands, improve water management on more than 1,700 acres of other land, and increase public access to the site. In particular, the creation of 220 acres of restored wetlands, 1,250 acres of enhanced wetlands, and consideration of local land use would contribute towards the coequal goals.

In evaluating whether the Project may create any inconsistencies with the Delta Plan, potentially relevant policies include, but may not be limited to, those on adaptive management, best available science, invasive species, and mitigation. Comments on these policies and potential issues are noted in more detail below.

Adaptive Management and Mitigation and Monitoring

Delta Plan Policy G P1 (23 California Code of Regulations section 5002) calls for ecosystem restoration projects to include adequate provisions for continued implementation of adaptive management, appropriate to the scope of the action; this requirement can be satisfied through the development of an adaptive management plan that is consistent with the framework described in Appendix 1B of the Delta Plan (<http://deltacouncil.ca.gov/docs/appendix-1b>), along with documentation of adequate resources to implement the proposed adaptive management process.

Some key parts of the adaptive management process involve identifying key uncertainties that can be addressed by a project and disseminating key findings to interested parties so that the design of future projects can be based on the lessons learned from past efforts. Council staff did not see a description of how adaptive management would be used in the Project, but understand that the project may follow the adaptive management plan for the Yolo Bypass Wildlife Area (YBWA), which encompasses the project area. If this is correct, we encourage you to explicitly reference the adaptive management plan for the YBWA.

Delta Plan Policy G P1 (23 California Code of Regulations section 5002) also requires that actions not exempt from CEQA and subject to Delta Plan regulations must include applicable feasible mitigation measures consistent with those identified in the Delta Plan Program Environmental Impact Report (PEIR) or substitute mitigation measures that are equally or more effective. The Delta Plan Mitigation and Monitoring Reporting Program (MMRP) is to be used to ensure compliance with the Delta Plan mitigation measures and this document is available at http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf. Relevant mitigation measures include 4-1, which is described further below, under “Invasive Species Management”.

Best Available Science

Delta Plan Policy G P1 (23 California Code of Regulations section 5002) also calls for covered actions to document use of best available science. This documentation should be consistent with the criteria listed in Appendix 1A of the Delta Plan regulations (available at <http://deltacouncil.ca.gov/docs/appendix-1a>), which include relevance, inclusiveness, and objectivity.

Invasive Species Management

Delta Plan policy ER P5 (23 California Code of Regulations section 5009) calls for avoiding introductions of invasive nonnative species or habitat that supports such species and states, “The potential for new introductions of or improved habitat conditions for nonnative invasive species, striped bass, or bass must be fully considered and avoided or mitigated in a way that appropriately protects the ecosystem.” Nonnative species, such as terrestrial and aquatic weeds, are a major obstacle to successful restoration because they affect the survival, health, and distribution of native wildlife and plant species. Although there is little chance of eradicating most established nonnative species, management can be designed to reduce their abundance.

According to the Project description, invasive aquatic vegetation is present within Parker Pond on the project site. This Project proposes to excavate a portion of this vegetation to make room for a new water lift station. Furthermore, the 220 acre area of new wetlands is directly downstream of this location. Given the presence of an invasive species and proximity to the new wetland area the Project should describe how it will manage invasive species if they

spread into the wetland area or other areas within the Project site. The project proposes to include Best Management Practices (BMPs) to address invasive species, noting that that:

“BMPs will be implemented while working near riparian habitats to avoid inadvertent damage to riparian vegetation to be retained. BMPs will include establishment of no-disturbance buffers around the outer edge of the riparian vegetation to prevent root and crown damage, soil compaction, and implementation of standard BMPs to reduce erosion and water quality impacts, and introduction and spread of invasive species.”

We recommend that the project explicitly describe how the spread of or creation of habitat for invasive species will be limited through illustrative BMPs from the YBWA invasive species management plan. We also recommend that you consider how the YBWA's invasive plant management plan, to the degree it is relevant to the Project, consider Delta Plan MMRP Biological Resources Mitigation Measure 4-1, which addresses both terrestrial and aquatic weeds. This particular mitigation measure calls for an invasive species management plan to be developed and implemented which include the following elements:

- Nonnative species eradication methods (if eradication is feasible)
- Nonnative species management methods
- Early detection methods
- Notification requirements
- BMPs for preconstruction, construction, and post construction periods
- Monitoring, remedial actions and reporting requirements
- Provisions for updating the target species list over the lifetime of the project as new invasive species become potential threats to the integrity of the local ecosystems

Concluding Comments

Overall, we support the goals and objectives of the Project as valuable to the YBWA and the Delta. The Council appreciates the opportunity to comment on your proposed project. We look forward to the opportunity to continue to work closely with CDFW over the coming months as it is finalized. I encourage you to contact Daniel Constable at Daniel.Constable@deltacouncil.ca.gov if you would like to discuss further or have any questions.

Sincerely,

Original signed by

Jessica Law
Chief Deputy Executive Officer
Delta Stewardship Council